

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Eric Gardner

January 30, 2024



PRI COURT
REPORTING

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIFESTYLE COMMUNITIES,)	
LTD., ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:22-cv-1775
CITY OF WORTHINGTON,)	
OHIO,)	
)	
Defendant.)	

DEPOSITION

of ERIC J. GARDNER, MAI, CCIM

Taken at law firm of
VORYS SATER SEYMOUR & PEASE
65 East Gay Street
Columbus, Ohio 43215

on January 30, 2024, at 11:16 a.m.

Reported by: Rhonda Lawrence

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STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition of ERIC J. GARDNER, MAI, CCIM, the
witness herein, called by the Defendants under
the applicable Rules of Federal Civil Court
Procedure, may be taken at this time by the
stenographic court reporter and notary public
pursuant to notice; that said deposition may be
reduced to writing stenographically by the court
reporter, whose notes thereafter may be
transcribed outside the presence of the witness;
and that the proof of the official character and
qualification of the notary is waived.

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1 ERIC J. GARDNER, MAI, CCIM

2 being first duly sworn, as hereinafter

3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 BY MR. ASHRAWI:

6 Q. Can you state your name for the record?

7 A. Eric, middle initial J., last name
8 Gardner, G-A-R-D-N-E-R.

9 Q. Mr. Gardner, I assume you've been
10 deposed before?

11 A. Correct.

12 Q. How many times?

13 A. Numerous.

14 Q. More than ten?

15 A. Probably, yeah.

16 Q. I'm going to go over a few ground rules,
17 which I'm sure you've heard before in your
18 previous depositions and from your counsel, so
19 bear with me.

20 A. Sure.

21 Q. I'm going to ask you a series of
22 questions, but if you don't understand any of my
23 questions or need me to repeat anything, just
24 please ask me to do so. If you answer one of my

1 questions, I'm going to assume you understood
2 it.

3 If you need a break, let me know. I'm
4 happy to accommodate. If there's a pending
5 question, I just ask that you answer that first.
6 We can't talk over each other, so let me finish
7 my question before you answer, and I'll try to
8 do the same as you're answering my question.

9 Need to stick to verbal responses so the
10 court reporter can take a nice clean record.

11 Are all those okay with you?

12 A. Yes.

13 Q. Okay. Any reason today why you would
14 not be able to give full, complete, truthful and
15 accurate testimony?

16 A. No.

17 Q. You swore an oath to tell the truth in
18 today's deposition. Do you understand that
19 that's the same oath that will be asked of you
20 if you testify in a court?

21 A. Yes.

22 Q. You understand that you're here to
23 testify in a federal lawsuit that was filed by
24 Lifestyle Communities in Worthington Campus

1 against the City of Worthington?

2 A. Yes.

3 Q. And you understand that the lawsuit
4 centers around a piece of property in the City
5 of Worthington that's commonly known as the
6 United Methodist Children's Home or the UMCH
7 property?

8 A. Yes.

9 MR. INGRAM: Objection to form.

10 Q. So moving forward, if I refer to the
11 property, you'll understand that I'm
12 referring -- unless I say otherwise -- to the
13 property that's central to this case?

14 A. The totality of the property?

15 Q. That's correct. The three parcels that
16 make up just under 38 acres.

17 A. Okay.

18 Q. What did you do to prepare for this
19 deposition?

20 A. I looked over my report, looked over the
21 file, talked to my attorney.

22 Q. Did you look at any other documents,
23 other than your report and the documents in your
24 file?

1 A. No.

2 Q. Did you look at any deposition testimony
3 or transcripts?

4 A. No.

5 Q. Did you look at any other expert reports
6 that have been produced in this matter?

7 A. Just what's in my file.

8 Q. You had quite a large file. I think it
9 was around 4,000 pages. Were there any
10 particular documents or pages in that file that
11 you reviewed?

12 MR. INGRAM: Objection. Form.

13 You can answer if you can.

14 A. I'm not sure I understand your question.

15 Q. Sure. Did you review all 4,000 pages
16 equally, or did you focus on particular
17 documents in your file?

18 MR. INGRAM: Same objection.

19 A. I looked at the totality of my -- of the
20 file contents.

21 Q. There was in your file about 900 pages
22 that was a real estate development secondary
23 source, Principles and Process of Real Estate
24 Development. Did you review that in preparation

1 for this deposition?

2 A. You're talking about the book from the
3 Urban Land Institute?

4 Q. Correct.

5 A. So I've taught the development class at
6 the University of Cincinnati, and that was the
7 textbook that I've used.

8 Q. Did you review that textbook
9 specifically in preparation for this deposition?

10 A. I looked at it. It was just part of --
11 kind of part of the body of knowledge. I looked
12 at it in preparation of my report.

13 Q. Outside of your files and your report,
14 any other -- any other document?

15 A. Nothing compelling.

16 Q. What about anything unconvincing?

17 A. No.

18 Q. Okay. Besides your attorney, did you
19 discuss or talk about this deposition with
20 anyone?

21 A. No.

22 Q. Anyone in your office?

23 A. They know I'm here.

24 Q. Mr. Gardner, I want to talk a little bit

1 about your background. How are you employed?

2 A. I'm the president and I'm a member of
3 Gardner Street Commercial Real Estate Group,
4 LLC.

5 Q. And what is the nature of that company?

6 A. We are a commercial real estate services
7 firm. We focus on valuation.

8 Q. Do you provide any other commercial real
9 estate services besides valuation?

10 A. Mostly valuation. We do -- some
11 assignments don't require an opinion of value
12 and it's just more consulting. So we get
13 involved in several consulting assignments on a
14 regular basis.

15 Q. When you consult, are you still
16 providing some opinion or analysis on valuation,
17 or are you consulting on other aspects of
18 commercial real estate?

19 MR. INGRAM: Objection. Form.

20 A. It just varies. Depends on the scope of
21 work that is -- it just depends on the scope of
22 work.

23 Q. You would say, though, primarily the
24 nature of the business is valuation work,

1 though, right?

2 A. Primarily.

3 Q. What's your educational background?

4 A. I got an undergraduate degree in
5 business administration from the University of
6 Cincinnati. I've got an MBA in finance from the
7 University of Dayton. I hold the MAI
8 designation from The Appraisal Institute. I
9 also hold the CCIM designation from the -- it's
10 a part of the National Association of Realtors.
11 CCIM stands for certified commercial investment
12 member.

13 Q. Does the CCIM designation allow you to
14 do anything in terms of services offered
15 different than you would offer if you didn't
16 have it?

17 MR. INGRAM: Objection to form.

18 A. The CCIM is -- it's kind of considered
19 the Ph.D. of commercial real estate. It's just
20 an additional certification/accreditation.

21 Q. It's not tied directly to appraisals or
22 valuations specifically, is it?

23 MR. INGRAM: Objection to form.

24 A. Valuation is a part of that, but it's

1 not -- typically, CCIMs are investment brokers,
2 property managers, asset managers. It's a
3 rigorous -- it's a graduate degree, essentially,
4 but it's a professional designation by those of
5 us that practice in commercial and investment
6 real estate.

7 Q. Can you remind me again what association
8 gives this designation, National Association
9 of -- and then I forgot?

10 A. I believe it's Realtors. But the CCIM
11 Institute is their own entity, but I believe
12 they're affiliated with the National Association
13 of Realtors, but I haven't kept up on the
14 structure.

15 Q. What did it take to get that
16 designation?

17 A. So I earned the MAI designation first,
18 and if you have that designation first you're --
19 at least at the time -- this goes back to the
20 early 2000s. I was able to participate in what
21 was known as their fast-track program. So I had
22 to take several of their core courses plus some
23 elective courses. They were all a week long.
24 And then I sat for the national comprehensive

1 exam. It was administered up in Washington,
2 D.C.

3 Typically, people have to do what's
4 known as a -- I did the demonstration report for
5 my MAI, so that counted as your project, but you
6 have to do a project, but I was given credit for
7 my demonstration report through The Appraisal
8 Institute. So since I had done that, I think,
9 within the past five or seven years.

10 Q. Is having an MAI a prerequisite to
11 having a CCIM designation?

12 A. No.

13 Q. It just allows you to fast track the
14 latter?

15 A. Correct.

16 Q. Is there any continuing education
17 required to keep up that designation, the CCIM
18 designation, that is?

19 A. Yes.

20 Q. And what is that like?

21 MR. INGRAM: Objection to form.

22 A. You have to maintain your -- a real
23 estate sales license and the continuing
24 education associated with that license.

1 Q. So you have a real estate sales license,
2 then?

3 A. Correct.

4 Q. Any other licenses or designations
5 besides the MAI or the CCIM?

6 A. I'm a certified general appraiser. I
7 maintain that through Ohio, Kentucky, Indiana,
8 and Michigan.

9 Q. Anything else?

10 A. My CV is located in my report, but I
11 think those are the highlights.

12 Q. What about your work history? Take me
13 back to your first job in commercial real estate
14 and then work your way up to where you are now
15 with Gardner Street.

16 MR. INGRAM: Objection to form.

17 A. Started in third grade. My mother was
18 the office manager for the Case & Wallace
19 Company, and she needed something for me to do
20 in the afternoons. I ran the copier. From
21 there -- I worked there part-time through grade
22 school.

23 Q. What did Case & Wallace do?

24 A. It's a commercial real estate appraiser

1 firm and property management firm.

2 Q. And that was obviously before child
3 labor laws were in place.

4 A. Apparently. Well, I negotiated, because
5 I wanted to ride my bike to school.

6 Q. There we go.

7 A. And my elementary school was a mile away
8 from mom's office. And where we lived I
9 couldn't ride my bike.

10 So from there I started as a co-op
11 student at the University of Cincinnati, 1992.
12 Worked for -- at the time it was Adkins Moy &
13 Wilkins, which became Property Advisors. Was
14 there from '92 into '98. '98 went to The Gem
15 Real Estate Group. Then moved to Colliers
16 Turley Martin Tucker in 2006. It's now referred
17 to as the Cushman & Wakefield office in
18 Cincinnati. 2010 moved to Pillar Valuation
19 Group. In 2019, end of '19, we formed Gardner
20 Street Commercial Real Estate Group.

21 Q. When you say we formed Gardner Street,
22 who is the "we" you were referring to?

23 A. That's myself and then Derek Street.

24 Q. Is Mr. Street also a MAI appraiser?

1 A. Not yet. He is a certified general
2 appraiser. He's working toward the MAI
3 designation. He's completed all the coursework.
4 The MAI takes about ten years to complete.
5 Derek's been in the business almost 20. But
6 it's a process.

7 Q. Any other owners or members of Gardner
8 Street?

9 A. No, not at this time.

10 Q. How many employees does Gardner Street
11 have?

12 A. Currently, we have six.

13 Q. Are those other appraisers or office
14 managers, or what's the breakdown?

15 MR. INGRAM: Objection. Form.

16 A. So Mr. Street and I are the certified
17 general appraisers. We have an office manager
18 part-time. We have a part-time research
19 manager, and we have two senior analysts.

20 Q. Did you grow up in the Cincinnati area?

21 A. Grew up in Dayton, Ohio, northern
22 Cincinnati.

23 Q. And Gardner Street is located in
24 Cincinnati now, correct?

1 A. We're in Blue Ash.

2 Q. Blue Ash.

3 --0--

4 (Deposition Exhibit 1 marked.)

5 --0--

6 BY MR. ASHRAWI:

7 Q. I'm going to hand you what I think
8 you've already got in front of you and what
9 we'll mark as Gardner Exhibit 1.

10 Mr. Gardner, are you familiar with this
11 document?

12 A. Yes.

13 Q. This is the restricted report that you
14 prepared for this case, correct?

15 A. Yes.

16 Q. Is this a complete and accurate copy of
17 that report? And take your time to look through
18 it.

19 A. Yes.

20 Q. I'm going to ask you a number of
21 questions about this report throughout the
22 deposition, but my first set of questions I want
23 to direct your attention to page 35, which is a
24 court case expert witness log from 2004 to the

1 current. Do you see that?

2 A. Yes.

3 Q. My first question is, is this an
4 exhaustive list of all cases in which you were
5 retained as an expert witness since 2004?

6 A. As it says at the top, just so we're
7 clear on it, we also -- my firm and I, we worked
8 on several real estate tax appeal cases. We did
9 not include those within this. And these are
10 the cases where I have provided either courtroom
11 testimony or a deposition. To the best of my
12 knowledge, best of my ability, this is a
13 complete list.

14 Q. Thank you for that clarification. So
15 that the record is clear, this list, number one,
16 does not include your expert testimony work for
17 any Board of Revision or Board of Tax Appeal
18 case, unless otherwise stated, right?

19 A. That is correct.

20 Q. And it only includes cases in which you
21 either provided deposition testimony or
22 courtroom testimony; is that right?

23 A. Correct.

24 Q. Okay. Thank you.

1 Is it fair to say that a majority of the
2 cases -- of the 50 cases listed here, a majority
3 of them are appropriation cases or condemnation
4 cases?

5 A. No.

6 Q. Tell me the breakdown of the nature of
7 these 50 different cases.

8 A. We've got a column there that has the
9 nature of the case. You know, certainly, a lot
10 of them are appropriation or condemnation cases,
11 but there's been a wide variety. I'm sure, as
12 you're familiar with it in your practice, there
13 can be some valuation disputes. Anything
14 from -- you know, there's been some zoning cases
15 here. There's been a case in federal court out
16 in San Diego just of a valuation dispute on a
17 building between partners. Certainly
18 appropriation cases. Density matters, divorce
19 cases. I think that covers it. We tried to
20 list the nature of the case there on the column
21 that states nature of the case.

22 Q. Yeah. That's very helpful. Let me ask
23 this question: I see several instances where
24 the nature of the case is condemnation case and

1 then several instances where it says
2 appropriation case. Are those one and the same,
3 or are you differentiating those type of cases?

4 A. They're basically one and the same.

5 Q. So I've counted 32 of the 50 as being
6 condemnation or appropriation cases. And my
7 next question for you is, out of those cases,
8 are you -- were you retained by -- has there
9 been any condemnation or appropriation case
10 listed on here where you've been retained by the
11 appropriating agency or entity?

12 MR. INGRAM: Objection to form.

13 Q. And the reason I ask, Mr. Gardner, is
14 you certainly list the clients, but oftentimes
15 the client is the retaining attorney, so it's
16 unclear whether the underlying entity that
17 you're doing work for is the appropriating
18 agency or the landowner. So that's my question.

19 MR. INGRAM: Same objection.

20 A. Item 14, Washington Township --
21 actually, item 1 -- line item 1, Stonelick
22 Township, we were hired by an insurance company.
23 I'm just going to have -- to answer your
24 question completely, I'm going to have to go

1 through these one by one.

2 Q. Let me make it a little easier for you.

3 So 1 and 14 are not condemnation or

4 appropriation cases. I'm focusing just on

5 those. And if you need time to take a look at

6 those, that's fine.

7 A. I'd have to go through them one by one.

8 Q. Sure.

9 A. Item 1, our client was ultimately
10 Stonelick Township.

11 Q. Take your time, Mr. Gardner, I'm just
12 going to grab a cup of coffee.

13 A. I believe, on the appropriation cases
14 where I've offered testimony, it tends to be for
15 property owners or counsel representing property
16 owners.

17 Q. I know Fran Barrett is not representing
18 government agencies, so I checked those off the
19 list.

20 A. Not always.

21 He's trying to retire. He's not very
22 successful at that.

23 Q. He's referred some matters over in that
24 effort to retire, which I appreciate.

1 A. He's trying.

2 Q. I know that your property tax cases
3 aren't listed on here. But are you also
4 primarily retained by the underlying taxpayer,
5 taxpayer attorney in those cases, or what's the
6 percentage split in that work?

7 A. Primarily, we get hired by landowners.

8 --0--

9 (Deposition Exhibit 2 marked.)

10 --0--

11 BY MR. ASHRAWI:

12 Q. Mr. Gardner, I'm going to hand you what
13 we'll mark as Gardner Exhibit 2. I will
14 represent to you, Mr. Gardner, this came from
15 your work file and is Bates numbered Gardner
16 1179 through Gardner 1182, and appears to be a
17 letter of agreement for expert real estate
18 services in this case. Are you familiar with
19 this document?

20 A. Yes.

21 Q. Subject to the redactions, is this a
22 complete and accurate copy of the letter of
23 agreement for services in this case?

24 A. Yes.

1 Q. Was your scope of assignment included in
2 this letter?

3 A. I believe so.

4 Q. What was your scope of assignment for
5 this case?

6 A. I would refer you to your Exhibit 1,
7 page 5 of our report, that lists out our scope
8 of work.

9 Q. And is this the same scope of work that
10 was included in the letter of agreement?

11 A. I would have to go back and look. The
12 version you've handed me here is redacted
13 significantly. But I believe it's very similar.

14 Q. In this redacted portion, were there any
15 facts or information provided by the Vorys firm
16 or Mr. Miller to be considered in your
17 assignment?

18 A. I'm not sure I understand your question.

19 Q. Let me ask it a different way. You're
20 retained by the Vorys firm, correct?

21 A. Yes.

22 Q. Did the Vorys firm provide to you
23 specific facts or information and ask you to
24 consider those in your assignment?

1 MR. INGRAM: Objection to form.

2 You may answer to the extent you can.

3 A. We were provided with various documents
4 that are contained within our file.

5 Q. Other than those documents, did you
6 receive specific information either in email
7 form, letter correspondence, over the phone from
8 Vorys about specific facts or information that
9 they wanted you to consider?

10 MR. INGRAM: Objection to form. Asked
11 and answered.

12 A. I've asked and answered that. I don't
13 know that -- you have the totality of my file.

14 Q. So the Vorys firm gave you a plan and
15 said appraise this property? Was that the scope
16 of information and data they provided you to
17 perform this report?

18 MR. INGRAM: Objection to form.
19 Mischaracterizes this witness's testimony.
20 Asked and answered.

21 Q. You can answer.

22 A. Can you rephrase your question? I'm not
23 sure I understand it, how you've asked it.

24 Q. Sure. What did Vorys ask you to do when

1 they retained you?

2 MR. INGRAM: Objection to form. Asked
3 and answered.

4 A. Analyze the subject property.

5 Q. When you say analyze, did they ask you
6 to give an opinion of value?

7 MR. INGRAM: Same objection.

8 A. They asked us to consider the property
9 in a couple different scenarios, as spelled out
10 in my report.

11 Q. So that's what I'm asking you. My
12 question is: what scenarios did Vorys provide
13 to you to consider?

14 A. I'll do my best to answer your question
15 by turning -- directing you to page 7 of our
16 report. Similar to all or most assignments in
17 our firm, we look at highest and best use, and
18 we looked at a couple different scenarios on the
19 subject property as spelled out in Scenario A
20 and Scenario B at the top of page 7 of my
21 report.

22 Q. I understand you looked at those two
23 scenarios. My question's a little bit
24 different. My question is: Did Vorys ask you

1 to look at these two scenarios separately?

2 MR. INGRAM: Objection to form.

3 You can answer that question, if you
4 can.

5 A. Again, they asked us to analyze the
6 subject property. I wrote the highest and best
7 use.

8 Q. You used the word analyze. You perform
9 valuation services primarily, correct?

10 A. Correct.

11 MR. INGRAM: Objection to form.

12 Q. So when you say analyze, is that
13 different than providing valuation services to
14 the property? What are you analyzing?

15 MR. INGRAM: Objection to form.

16 Q. It's not a trick question. I just want
17 to know what you're analyzing.

18 MR. INGRAM: Same objections.

19 A. To answer your first question, we looked
20 at the -- we developed the highest and best use.
21 To be clear, we don't always develop an opinion
22 of value.

23 Q. Did you develop one in this case?

24 A. Yes.

1 Q. So when you say analyze the property,
2 that would include, in this scenario,
3 determining the highest and best use in the
4 various scenarios and then opining on value?

5 A. In general, correct.

6 Q. Anything else?

7 A. No.

8 Q. So I don't think I got the answer to
9 this question, so let me try to ask it a
10 different way. I see that there are two
11 scenarios in your report, Scenario A and
12 Scenario B. Who came up with those scenarios?

13 A. We were asked to consider various
14 impact -- the various impact on the zoning, but
15 I came up with the -- I wrote the highest and
16 best use.

17 Q. Mr. Gardner, if you turn to page 8 of
18 your report, at the top you have opinion of
19 value before Scenario A, this scenario assumes a
20 PUD zoning to allow for a mixed-use development.

21 Do you see that?

22 A. Yes.

23 Q. Did Vorys ask you to assume the PUD
24 zoning for Scenario A before valuation?

1 MR. INGRAM: Objection to form.

2 A. We were asked to look at the
3 comprehensive -- the land use plan, the
4 comprehensive plan from 2014, and what the value
5 of the property would be if you follow -- that
6 preparation, if you will, for the subject site,
7 for the totality of the property, what that
8 would look like for a mixed-use development.
9 Again, similar to the comprehensive plan.

10 Q. Did Vorys identify or provide you with
11 any other assumptions to make while preparing
12 your report?

13 A. The two scenarios that we've discussed
14 here today.

15 Q. Okay. Thank you.

16 Can you describe for me the difference
17 between an extraordinary assumption and a
18 hypothetical condition?

19 A. Yes.

20 Q. I'm going to ask you to do that, then.

21 A. I'm going to direct you to page 4.
22 There's a definition of the extraordinary
23 assumption as stated in our report. That's the
24 definition of the extraordinary assumption.

1 Q. So let's start there. If I'm reading
2 the definition correctly, if the assumption made
3 in Scenario A ends up not being true or
4 accurate, then that would potentially change
5 your analysis, correct?

6 MR. INGRAM: Objection to form.

7 A. Maybe.

8 Q. So now, what is a hypothetical
9 condition, and how does that differ from an
10 extraordinary assumption?

11 A. We have it defined on page 40 of our
12 report.

13 Q. So in layman's terms, a hypothetical
14 condition is something that is contrary to a
15 known fact, but is used for the analysis
16 anyways; is that right?

17 A. I'm going to stick to the formal
18 definition as stated on page 40 of my report.

19 Q. And you didn't use any hypothetical
20 conditions in this report; is that right?

21 A. Correct.

22 --0--

23 (Deposition Exhibit 3 marked.)

24 --0--

1 BY MR. ASHRAWI:

2 Q. Mr. Gardner, I'm going to hand you what
3 we'll mark as Gardner Exhibit 3. Are you
4 familiar with this document?

5 A. Yes.

6 Q. What is it?

7 A. This summarizes the difference between
8 the two reporting formats that appraisers can
9 use.

10 Q. Is this a document generated by Gardner
11 Street Group?

12 A. Yes.

13 Q. And this document also describes the
14 process and the service for all assignments; is
15 that correct?

16 A. Yes.

17 Q. And was this the same process used in
18 developing your opinion in this case?

19 A. Yes.

20 Q. Does this process begin before or after
21 the scope of work is identified?

22 MR. INGRAM: Objection to form.

23 A. It depends.

24 Q. What does it depend on?

1 MR. INGRAM: Same objection.

2 A. The complexity of the property and the
3 assignment.

4 Q. How would you describe the complexity of
5 this property and this assignment in this case?

6 MR. INGRAM: Objection to form.

7 You may answer if you can.

8 A. It's vacant land. Vacant land is always
9 more complex.

10 Q. And why is that?

11 A. There's always uncertainty as the
12 highest and best use.

13 Q. When there's uncertainty to the highest
14 and best use, how, then, do you come up with
15 your highest and best use?

16 A. You go through the tests of highest and
17 best use and you look to the market.

18 Q. Does any particular test, under the
19 highest and best use elements, govern over the
20 other?

21 A. No.

22 MR. INGRAM: Objection to form.

23 Q. Would you say they're all weighted
24 appropriately or the same?

1 MR. INGRAM: Objection to form.

2 A. They're all part of the totality of
3 forming an opinion of highest and best use.

4 Q. Under this process, in the middlish of
5 bullet 3, it talks about due diligence
6 documents, and more specifically, details
7 concerning any recent or pending sale, including
8 an investment package, copies of contracts
9 and/or closing statements.

10 You're aware that this property sold in
11 December of 2020; is that correct?

12 A. Yes.

13 Q. And did you review all of the sale
14 documents, closing documents and contracts
15 associated with that sale?

16 A. "All" is a pretty strong word. I don't
17 think I reviewed everything.

18 Q. Did you review the purchase and sale
19 agreement?

20 A. I'd have to look at my file. I'm not
21 sure, as I sit here today.

22 Q. So if it was in your file, would you
23 have reviewed it?

24 A. If it was in my file, I looked at it.

1 Q. would you agree with me that that sale
2 was an arm's length transaction?

3 MR. INGRAM: Objection. Form.

4 A. I believe it was.

5 Q. In your second-to-last bullet point
6 under the process, you referred to analyzing
7 market information, such as comparable sales and
8 rentals.

9 In Scenario A, did you look at any
10 comparable sales?

11 A. we considered comparable sales, but
12 ultimately couldn't find any.

13 Q. would the sale of the subject be
14 considered a comparable sale?

15 A. No. It's a sale of the subject.

16 Q. would you consider it in your analysis
17 of the value of the property?

18 A. we did.

19 Q. How was it factored in?

20 A. It's --

21 Q. I understand where the discussion is
22 located in the report. My question is: How was
23 it factored into your analysis?

24 MR. INGRAM: If you can let the witness

1 answer your question before you fire off two or
2 three more.

3 MR. ASHRAWI: Strike the first one, and
4 we'll stand on the second one.

5 A. We reported the December 2020 sale on
6 page 5.

7 Q. And where is it analyzed in your report?

8 A. Also on page 5.

9 Q. Is that the entirety of the analysis and
10 reporting of the sale?

11 MR. INGRAM: Objection to form.

12 A. We considered the dollar per acre of the
13 sale from December of 2020.

14 Q. How so?

15 A. We took the \$5.2 million sale price and
16 we divided it by the 37.35 acres to arrive at a
17 sales price per acre of \$139,224.

18 Q. And was that sales price per acre then
19 considered and used in forming any of your
20 opinions of value?

21 MR. INGRAM: Objection to form. Asked
22 and answered.

23 A. It's just a data point.

24 Q. Continuing on Exhibit 3, which is the

1 Appraisal Process and Products Type - Summary by
2 Gardner Street. The second big category, as you
3 previously mentioned, is an outline of the two
4 different reporting options per USPAP. Do you
5 see that?

6 A. Yes.

7 Q. And in this case you -- Option 2 was
8 selected, the restricted appraisal report,
9 right?

10 A. Yes.

11 Q. Were you asked to do a restricted
12 appraisal report?

13 A. When we're originally contacted, one of
14 the things I do is kind of educate the client on
15 the format that we have two reporting formats
16 that are available to appraisers under USPAP,
17 and simply educated the client on the two
18 reporting formats.

19 Q. And then did the client ask you to use
20 option 2, the restricted appraisal format?

21 A. I don't know.

22 Q. You don't recall if you made that
23 decision on your own or if you were directed to
24 use that format?

1 A. I really don't recall. I presented it
2 to the client on these are the two reporting
3 formats that we use that are available.

4 Q. And then someone made the decision to go
5 with Option 2, but you don't know who, is
6 that --

7 A. I really don't know who.

8 Q. Okay. Why would you choose one over the
9 other? What are the factors you consider?

10 MR. INGRAM: Objection. Calls for
11 speculation.

12 A. It really just depends on the client
13 preference, quite frankly. The appraisal report
14 tends to be used by usually our lender clients
15 that are not familiar with the property. They
16 want a full due diligence contained within the
17 documents.

18 The restricted format, most of our legal
19 clients tend to like that format better because
20 it's more clear and concise, more businesslike.
21 It hits the highlights. It hits the core value
22 drivers without a lot of boilerplate.

23 Q. Under the restricted appraisal report,
24 it talks about -- it's limited to the clients

1 and other named intended users because it may
2 not contain supporting rationale for all the
3 opinions and conclusions that are set forth. Is
4 that a USPAP statement, or is that a Gardner
5 Street statement?

6 A. I believe it's USPAP.

7 Q. Would you say that your report does not
8 contain rationale for all of the opinions and
9 conclusions set forth therein?

10 A. No.

11 MR. INGRAM: Objection. Form.

12 A. I think my report is very clear. I
13 think it provides all of the relevant
14 information.

15 Q. And does it provide all of the
16 supporting rationale?

17 A. You maybe could look at our file.

18 Q. I'm not asking about the file. I'm
19 asking about the report.

20 A. Okay.

21 Q. Does the report contain all the
22 supporting rationale for your opinions and
23 conclusions?

24 A. The restricted report option does not

1 have to include all of that. It's a summary.
2 It's just the format -- it's just the format of
3 the analysis. It's a business -- it's more of a
4 businesslike report. We do them frequently. A
5 restricted report is in compliance with USPAP.

6 Q. I understand that. I just wanted to
7 know -- and I understand that it doesn't have to
8 contain the supporting rationale. And I'm
9 asking you to confirm whether your report itself
10 contains all of the supporting rationale, or if
11 you have to look elsewhere for that rationale?

12 MR. INGRAM: Objection to form. Asked
13 and answered several times now.

14 Q. You can answer. Yes or no, does it have
15 the supporting rationale or not?

16 MR. INGRAM: Same objection.

17 A. I think, for an educated client, it
18 contains everything that they need to look at.

19 Q. So it wouldn't contain everything that
20 an uneducated user would need; is that fair?

21 MR. INGRAM: Objection to form.

22 A. Maybe.

23 Q. And Mr. Gardner, I know I'm going to get
24 an objection to it, because I know I've asked

1 it, but I forgot the answer, so bear with me.

2 On Exhibit 2, which is your redacted
3 letter of agreement, you had previously
4 testified that Vorys asked you to consider a
5 highest and best use consistent with a
6 comprehensive plan and then second scenario. Is
7 that language -- is that scope or is that
8 information contained in this letter agreement,
9 to the best of your recollection?

10 MR. INGRAM: Objection to form.

11 You can answer if you can.

12 A. I don't know.

13 MR. ASHRAWI: Chris, I would just ask
14 that you all re-review the redacted portions of
15 this, and if there's any information related to
16 those assumptions or facts, that we be provided
17 with an unredacted copy of that, or portions of
18 the unredacted copies of those.

19 MR. INGRAM: Yeah, Yaz, we can certainly
20 take that up off-line, but we have produced what
21 Mr. Gardner relied upon.

22 MR. ASHRAWI: Okay. we'll take that
23 off-line.

24

1 BY MR. ASHRAWI:

2 Q. Mr. Gardner, in the preparation of your
3 report, who all worked on your report?

4 A. My staff and I.

5 Q. Who specifically from your staff?

6 A. For each and every report within our
7 office, at least four people touch every
8 assignment. We work as a team.

9 Q. Did Mr. Street contribute to any portion
10 of this report?

11 A. I think he may have done a proofread,
12 but he was not -- at the time, he was not
13 primarily working on this one with me.

14 Q. Safe to say you were the primary drafter
15 and analyst on this?

16 A. Yes.

17 Q. When you were analyzing the market
18 information -- you analyze market information as
19 part of your process, right?

20 A. Yes.

21 Q. Did you speak with any market
22 participants as part of that analysis?

23 MR. INGRAM: Objection to form.

24 A. Yes.

1 Q. who?

2 A. I spoke with, in this case, the property
3 owner representative, Sam Stark.

4 Q. I'm sorry, I'm going to pause you right
5 there. Is Sam Stark the representative for
6 Lifestyle Communities or the property owner?

7 A. Yes. He was my primary contact.

8 Q. who else?

9 A. We gather market information from a
10 variety of sources, which I'm sure you reviewed
11 in our file. As I sit here today, Principle
12 Real Estate group. It's Skip Eberly, who is an
13 MAI, CCIM here in Columbus. Spoke with Debi
14 Wilcox, also an MAI and a CCIM. Sam Kuhn, Sam
15 Kuhn & Associates. Don Miller. Don is also an
16 MAI. I think those are the primary Columbus --
17 my peers within this market.

18 Q. I'm going to ask you a little bit more
19 about each of these individuals, but outside of
20 those appraisers and your contact with the
21 property owner, did you speak with any others --
22 any other market participants?

23 A. Spoke with a couple developers that we
24 work with on a regular basis.

1 Q. who did you speak with specifically?

2 A. Chris Dobrozsi from Neyer Properties.

3 They have developed the Montgomery Quarter

4 project. It's a mixed-use project in

5 Montgomery, Ohio.

6 Q. who else?

7 A. Rob Smyjunas, Vandercar Holdings.

8 Q. Could you spell that last name, to the
9 best of your ability. It's for our friend here.

10 A. Oh, boy. That's a good one.

11 Q. And if not, that's okay.

12 A. I don't have my phone with me. S -- I'm
13 going to butcher it. Sorry, Rob.

14 S-M-Y-J-U-N-I-S [sic].

15 Q. And I'm sorry, Rob is who?

16 A. Vandercar Holdings.

17 And also Bob Fessler. Also Bob's with
18 Fessler Development, but then they also -- he
19 also does work with Vandercar.

20 Q. Anyone else?

21 A. Not that I can think of.

22 Q. Did you speak with any City of
23 Worthington officials?

24 A. No.

1 Q. Did you speak with any other
2 governmental officials in central Ohio?

3 A. No. No, I didn't.

4 Q. You said Principle Real Estate Group.
5 That was Skip Weberly?

6 A. Eberly, with an E. E-B-E-R-L-Y. That
7 one I can spell.

8 MR. INGRAM: Sorry to interrupt. We've
9 been going for a little over an hour now. So
10 whenever it's a convenient time for a break.

11 MR. ASHRAWI: Let's take a break right
12 now.

13 (Recess.)

14 BY MR. ASHRAWI:

15 Q. Mr. Gardner, turning back to Exhibit 3,
16 which is the Appraisal Process and Products
17 Type - Summary sheet, you reference at the
18 bottom USPAP Advisory Opinion 38. Is that in
19 relation to the restricted appraisal report?

20 A. Yes.

21 --0--

22 (Deposition Exhibit 4 marked.)

23 --0--

24

1 BY MR. ASHRAWI:

2 Q. I'm going to hand you what we'll mark as
3 Gardner Exhibit 4. Do you know what this
4 document is?

5 A. Yes.

6 Q. This is Advisory Opinion 38, which is in
7 the USPAP manual; is that right?

8 A. Yes.

9 Q. And USPAP is the governing agency or
10 governing guidelines for your appraisal reports;
11 is that fair?

12 A. Yes.

13 Q. And this opinion discusses the
14 various -- various information about restricted
15 appraisal reports and the differences between
16 those reports and regular reports and other
17 aspects of the restricted appraisal report; is
18 that correct?

19 A. Can you define what a regular report is?

20 Q. Sure. I'm using the term regular report
21 to mean the appraisal report identified in
22 option 1 of your -- of our Exhibit 3.

23 A. So a full report?

24 Q. Full report. Correct.

1 A. Because there's no such thing as a
2 regular report.

3 Q. So would you -- and thank you for that.
4 So would I be correct in calling what's referred
5 to as Option 1 a full appraisal report?

6 A. No. It's just an appraisal report.

7 Q. Okay. An appraisal report.

8 So back to Exhibit 4, is this a true and
9 accurate copy of the USPAP guidelines for
10 restricted appraisal reports?

11 MR. INGRAM: Objection to form.

12 A. It is page 114, 115, 116 and 117 from
13 the advisory opinions.

14 Q. Which is part of the USPAP manual and
15 guidelines; is that correct?

16 A. It's a part of it, yes.

17 Q. On the first page, on line 71, if you
18 look to the left, it talks about when a
19 restricted appraisal report may be appropriate.
20 Do you see that?

21 A. Yes.

22 Q. And there are three bullet points for
23 that. The first says that the client
24 understands the limited utility of this option.

1 In this instance, was your client -- did
2 your client understand the limited utility of
3 the restricted appraisal report?

4 MR. INGRAM: Objection to form. Calls
5 for speculation.

6 A. I believe so. Or I should say I
7 educated them.

8 Q. And did the client confirm that they did
9 not need the level of information required in an
10 appraisal report, as outlined in bullet point 3
11 under that heading?

12 A. Yes.

13 Q. And you indicated that you advised the
14 client that the report may not contain
15 supporting rationale for all of the opinions and
16 conclusions set forth in the report?

17 MR. INGRAM: Objection to form.
18 Mischaracterizes this witness's prior testimony.

19 A. We discussed that the restricted report
20 format would contain the conclusions. We also
21 discussed, for example, you know, the restricted
22 report, by example, does not include a
23 neighborhood description. It was felt that --
24 between the client and the City of Worthington,

1 that they really didn't need a full neighborhood
2 description describing the City of Worthington.
3 We assumed that all parties understood where the
4 City of Worthington is located, and so we did
5 not include a neighborhood description. We
6 didn't include what I will call standard
7 boilerplate. The restricted report option
8 focuses on the conclusions.

9 Q. Beginning on that same page, the very
10 last line states that, some examples of
11 situations in which a restricted appraisal
12 report may be appropriate are, and then there
13 are four bullet points that continue onto the
14 next page. And I want to go through those
15 examples.

16 The first one talks about the intended
17 use is consultation for acquisition or
18 disposition by a collector who's knowledgeable
19 about the subject property.

20 That's not the case here, is it?

21 A. Correct.

22 Q. The second example is a real property
23 owner wants to know the market value of their
24 property, but does not need to know details as

1 to how the appraiser arrived at that conclusion.

2 Is that the situation here?

3 MR. INGRAM: Objection to form.

4 A. It's generally reasonable.

5 Q. And I assume the third and fourth
6 examples dealing with yearly or quarterly
7 appraisal reports or a preliminary hearing to
8 the disputed tax assessment, that's not
9 applicable here; is that right?

10 MR. INGRAM: Objection to form.

11 A. Not at this time.

12 Q. Have you been asked to prepare any
13 appraisal report for tax dispute?

14 A. For the subject property?

15 Q. Yes.

16 A. Not at this time.

17 Q. Let me just clarify your answer. When
18 you say not at this time, are you suggesting
19 that you have been asked to perform a report for
20 tax purposes sometime in the future, or that you
21 haven't been asked at all?

22 A. We have not been asked at all.

23 Q. On the last page of Exhibit 4, which is
24 Bates numbered in the bottom right-hand corner

1 as Gardner 76, the very first bolded line talks
2 about what an appraiser must disclose when using
3 a restricted appraisal report. Do you see that?

4 A. You're looking at line 109?

5 Q. Yes.

6 A. Yes, I do see that.

7 Q. And Standard Rules 2-2(b), 8-2(b) and
8 10-2(b), those refer to USPAP rules; is that
9 correct?

10 A. Yes.

11 Q. And those require that the restricted
12 appraisal report must disclose clearly and
13 conspicuously those two statements which are
14 listed below, and I'll read them into the
15 record. Clearly and conspicuously state a
16 restriction that limits use of the report to the
17 client and the named intended users; and clearly
18 and conspicuously warn that the report may not
19 contain supporting rationale for all of the
20 opinions and conclusions set forth in the
21 report.

22 Did I read that correctly?

23 A. Yes.

24 Q. Did you make those disclosures in your

1 restricted appraisal report?

2 MR. INGRAM: Objection to form.

3 You may answer to the extent you can.

4 A. Page 2 of our report, we clearly state
5 that the intended use is for use in a court
6 case. Also, on page 2, the intended user is
7 Mr. Joseph R. Miller of the firm Vorys, Sater,
8 Seymour and Pease.

9 Q. I understand that, Mr. Gardner. My
10 question was: Were these two disclosures that
11 are required by Standard Rules 2-2(b), 8-2(b),
12 and 10-2(b) regarding the restrictions on the
13 use of a restricted appraisal report included in
14 your restricted appraisal report?

15 A. We discussed those with the client, and
16 it is clearly labeled that our report is a
17 restricted report format. And it's clearly
18 understood that the restricted report format
19 focuses on the conclusions.

20 Q. But those statements are not located in
21 the report, correct?

22 MR. INGRAM: Objection to form.

23 A. Page 36 contains a signed certification.
24 Page 37, 38, 39 include the assumptions and

1 limited conditions.

2 Q. I want to now turn your attention back
3 to that Exhibit 1, your report that you have in
4 front of you, and specifically to page 35 with
5 your court case expert witness log. I want to
6 confirm a couple things.

7 Number one, you've never -- you have not
8 previously testified in a federal case involving
9 a partial regulatory take, have you?

10 A. I have testified in federal cases. I
11 have testified where there is -- there has been
12 a total temporary regulatory taking. However,
13 that case was not a federal case.

14 Q. Which case was that?

15 A. Line item 38, Green Acres Foundation
16 versus the City of Cincinnati.

17 Q. And in that case, you were retained by
18 Barrett & Weber on behalf of Green Acres
19 Foundation?

20 A. Correct.

21 Q. And there was an allegation of a total
22 regulatory take -- total temporary regulatory
23 take?

24 A. It was a total temporary regulatory

1 taking.

2 Q. Did you prepare an appraisal report in
3 that case?

4 A. Yes, we did. Yes, we did.

5 Q. And did you testify in a deposition or
6 in court for that case?

7 A. I believe there were actually two
8 depositions, if I recall, and I did testify at
9 trial.

10 Q. So you testified in two depositions and
11 at trial for that case?

12 A. I believe there were two depositions.

13 Q. What was the result of that case, if you
14 recall?

15 A. City of Cincinnati owed the Green Acres
16 Foundation a lot of money.

17 Q. Was it -- you said you prepared an
18 appraisal report in that case, right?

19 A. It may have been a restricted report
20 option, but we did do -- it may have been a
21 restricted appraisal. I don't know, as we sit
22 here today, but we did prepare a report and it
23 did contain values in it.

24 Q. And you just don't know whether it was

1 an appraisal report or a restricted appraisal
2 report, right?

3 A. I don't know. I would have to go back
4 and look.

5 Q. Any other cases involving regulatory
6 takings claims?

7 A. Not that I can recall.

8 Q. You've not been retained in any case
9 that was pending in Franklin County, is that
10 correct, that you testified in?

11 MR. INGRAM: Objection to form.

12 A. Only real estate tax appeal cases.

13 Q. You've not testified in any case pending
14 in the Southern District of Ohio; is that
15 correct?

16 A. Not that I'm aware of.

17 Q. For any of your appropriation cases that
18 you've listed on here, are there any that -- or
19 condemnation cases -- are there any that you
20 specifically recall preparing a restricted
21 appraisal report for?

22 A. We have prepared numerous restricted
23 appraisal reports for appropriation cases, some
24 for Frost Brown Todd.

1 Q. Which ones for Frost Brown Todd?

2 A. I don't know that they're on here
3 because they tend to all settle.

4 Q. Sure. So which ones?

5 A. Offhand, I recall a Thorntons Gas
6 Station along Route 32 in Clermont County.

7 Q. Any others?

8 A. I would have to go back and look.
9 That's a fairly recent one.

10 Q. And why did you do a restricted
11 appraisal report in that instance?

12 A. The reason we do -- they're simpler and
13 easier. They focus on the conclusions. Clients
14 don't want the boilerplate.

15 Q. In this one, did the client, who was
16 Frost Brown Todd, ask you to do a restricted
17 appraisal report for the Thorntons case?

18 A. Yes.

19 Q. Are there any other cases listed in the
20 table on page 35 that you recall specifically
21 doing a restricted appraisal report?

22 A. You have to understand, the restricted
23 report option is fairly new under USPAP, so I'm
24 going to go from the bottom up.

1 we did do restricted reports at line
2 item 50, Oakes & Oakes. That was a divorce
3 case. There were about 40 properties involved.
4 I did offer testimony in that matter. Those
5 were -- as I recall, those were all restricted
6 reports.

7 Stapleton, I think we -- I can't recall,
8 I would have to look at the file. I believe we
9 did a restricted report, or we may have done one
10 on Stapleton.

11 Line item 46, I believe we -- that case
12 started back in 2009. I think we did a summary
13 appraisal report on that one. That case just
14 settled in the summer of 2023. I believe that
15 was a summary appraisal report, which was a
16 previous USPAP reporting option.

17 we've performed several either summary
18 or restricted reports on various pipeline cases,
19 usually the ones that are noncomplex or not
20 maybe -- it really just depends. We've done
21 some very complex ones in restricted or summary
22 report.

23 Q. So the complexity of the assignment
24 doesn't impact whether you determine to do an

1 appraisal report or restricted?

2 A. No, it does not. No.

3 Q. So far I have line item 50 and line item
4 46 -- or excuse me, line item 50 only as being a
5 restricted appraisal report. Any others? And
6 if you don't know, that's fine. Just for the
7 ones that you know.

8 MR. INGRAM: Objection. Misstates this
9 witness's prior testimony.

10 Q. Were there any others that you named
11 that you did a restricted appraisal report for?
12 Not a summary appraisal report, restricted.

13 A. You have to understand, the restricted
14 report option just became available, I think, in
15 2020. So before that, we had a summary option.
16 It was a change to USPAP. Again, the -- I think
17 what you need to understand is it's really --
18 it's the format option, and oftentimes clients
19 don't want a neighborhood -- want or need or
20 desire like a neighborhood description. So
21 again, this was a change in 2020. So we did
22 summary reports on a lot of the property lines 1
23 through 44, 45, because the summary report
24 option was what was available under USPAP.

1 Q. So is it your testimony that a summary
2 appraisal report under USPAP is the same thing
3 as a restricted appraisal report?

4 MR. INGRAM: Objection to form.

5 A. They are different.

6 Q. Right. I knew that. That's why I asked
7 the question.

8 A. Wonderful.

9 Q. Back to my question. Any others you can
10 recall that were restricted appraisal reports?
11 And I assume none before 2020, since that's when
12 it was implemented.

13 A. That's correct.

14 Q. Okay. So just the one, line item 50,
15 then, right?

16 MR. INGRAM: Objection to form.

17 A. But there were multiple reports there.
18 As I testified to previously, there were over 40
19 different properties.

20 Q. Okay. Thank you.

21 Just to set the record clear, the
22 summary appraisal report is actually akin to
23 what you described in Option 1 as an appraisal
24 report, correct?

1 A. No.

2 Q. How is it different?

3 A. When I first started in the industry in
4 the mid '90s, we had three different reporting
5 options. We had a self-contained, we had a
6 summary, and then a restricted. The summary
7 report option went away as of 2020.

8 Q. Wait a second. You just listed
9 restricted in there. So are you saying
10 restricted appraisal reports were available in
11 the mid '90s?

12 A. There's always been a restricted option.
13 There used to be three reporting formats. Now
14 there are two.

15 Q. I want to get into the substance of your
16 report a little bit. I think you've testified
17 your report complies with USPAP, right?

18 A. It complies with the spirit and intent
19 of USPAP, right.

20 Q. You had excerpts in your report from The
21 Appraisal of Real Estate. How does that play
22 into guidelines or standards that appraisers
23 use?

24 A. They're really two separate and distinct

1 documents that you referred to. The appraisal
2 of Real Estate is published by The Appraisal
3 Institute. USPAP is published by The Appraisal
4 Foundation.

5 Q. So what is the function or utility of
6 The Appraisal of Real Estate?

7 MR. INGRAM: Objection to form.

8 You may answer to the extent you can.

9 A. It's a textbook.

10 Q. And you rely on The Appraisal of Real
11 Estate for various things when performing
12 appraisal work?

13 A. I look at it.

14 Q. But it's not something like USPAP where
15 you're either in compliance with or not, I guess
16 is my question; is that fair?

17 MR. INGRAM: Objection to form.

18 A. It's a textbook.

19 Q. So unlike USPAP, you don't have to
20 certify that your report complies with The
21 Appraisal of Real Estate, right?

22 A. Correct.

23 Q. What is your ultimate opinion and
24 conclusion that you reach in this report?

1 MR. INGRAM: Objection to form.

2 A. My ultimate conclusion, shown on page
3 17, is that there is a substantial and
4 significant difference in value depending upon
5 either Scenario A, highest and best use as a
6 mixed-use development that would be consistent
7 with our highest and best use, which would be
8 consistent with the 2014 comprehensive plan.
9 Scenario A demonstrates what that value could
10 be.

11 Scenario B demonstrates if you do
12 nothing with the site, you do not make any
13 changes or accommodations to the SD -- I'm
14 sorry, S-1 zoning, which essentially limits the
15 property to mostly a park. To be clear, 31
16 acres of the site just as green space.

17 So my ultimate conclusion is it
18 demonstrates there is a significant and
19 substantial difference in value between those
20 two scenarios.

21 Q. Is it your expert opinion that
22 Lifestyle, or LC, the property owner, is owed
23 \$52,162,000?

24 MR. INGRAM: Objection to form.

1 A. What my report demonstrates is, from a
2 market perspective, whether it's LC or any other
3 developer that had a reasonable expectation to
4 follow the 2014 comprehensive land use plan,
5 what could be developed on that site.

6 Q. Under the opinion of value for Scenario
7 A, just so I understand it, is it your opinion
8 that the undeveloped vacant land is worth \$55.5
9 million?

10 A. On page 11 of my report, we spell out a
11 range of value under Scenario A, which assumes
12 the highest and best use as shown on page 7 and
13 provides a range between 47.5 million to 63.5
14 million with a final opinion of value under
15 Scenario A of 55.5 million.

16 Q. I understand all that. My question was
17 much simpler. Does that represent the value of
18 the vacant land, or is there some improvement
19 value included in that opinion?

20 MR. INGRAM: Objection to form.
21 Argumentative.

22 A. That would be of the land as though the
23 property is developed with a project in total
24 that would have a market value as of January --

1 in January of the year 2026, with a projected
2 stabilized market value between 340 million to
3 \$360 million.

4 Q. Let me try to understand this better.
5 So that number, the \$55.5 million number, or the
6 range, represents what the land -- what you
7 believe the land is worth assuming there is a
8 fully developed project, mixed-use development
9 on the land; is that accurate?

10 A. Generally.

11 Q. What is the -- in your report you note
12 that there were multiple scenarios and multiple
13 effective dates.

14 What is the effective date of your \$55.5
15 million opinion?

16 MR. INGRAM: Objection. Misstates the
17 document.

18 A. As shown on page 11, the effective date
19 is December of 2022.

20 Q. How did you come up with that effective
21 date?

22 A. There was a zoning application that was
23 submitted in 2021. It was denied December 13th
24 of 2021. If they would not have been denied, if

1 a developer could have moved forward with a
2 project, with a reasonable project, broken
3 ground and being able to move forward with a
4 project, we projected December of 2022 as a
5 reasonable effective date about a year later.

6 Q. Have you ever developed a mixed-use
7 development?

8 A. Not personally where I'm the developer.
9 I've been a consultant on several.

10 Q. Is the 12-month projection just from
11 your personal knowledge, or how did you arrive
12 at that 12-month?

13 A. Decades of experience.

14 Q. So in this \$55.5 million opinion of
15 value, you are assuming the property is fully
16 developed with a mixed-use development that was
17 submitted to the City of Worthington, right?

18 MR. INGRAM: Objection to form.

19 You may answer to the extent you can.

20 A. The effective date -- what we did is
21 looked forward about four years into January of
22 '26. We looked at -- we considered actual
23 costs. Looked forward and then discounted back
24 as we spelled out, I guess, on page 4 is an

1 extraordinary assumption number 1.

2 Q. I understand that. I guess my question
3 is different. I understand that in your
4 Scenario A on page 7 you have a highest and best
5 use assumption of a mixed-use development. I
6 didn't realize, until you testified today, that
7 assumption actually includes a fully improved,
8 fully developed parcel. We can agree that, as
9 the property sits today, it's still vacant,
10 right?

11 A. Today, it's vacant.

12 Q. As of December of 2022, it was vacant,
13 right?

14 A. It actually may have had some
15 improvements on it, is my understanding, but
16 those improvements were raised sometime -- I
17 don't know the exact date. Effectively, from a
18 development perspective, yes, it was vacant
19 land.

20 Q. So you are assuming a fact that it's
21 fully developed in the summer of 2022 that is
22 objectively not the case, right?

23 MR. INGRAM: Objection to form.

24 A. No.

1 Q. So it was fully developed in December of
2 2022?

3 A. No.

4 MR. INGRAM: Objection to form. Now
5 you're getting argumentative, counsel.

6 Q. Well, I'm confused, because that's why I
7 asked the question about a hypothetical
8 condition. We talked about the definition of a
9 hypothetical condition, right? Do you recall
10 that testimony?

11 A. Yes.

12 Q. So a hypothetical condition is a
13 condition which is contrary to what is known by
14 the appraiser to exist on the effective date of
15 the assignment results, but is used for purposes
16 of the analysis.

17 December of 2022, this property wasn't
18 developed at all, right?

19 MR. INGRAM: Objection to form. Asked
20 and answered. Argumentative.

21 A. Can you restate your question?

22 Q. Sure.

23 A. I'm confused by it.

24 Q. I can restate it.

1 Your effective date for this report for
2 the 55.5 million opinion of value is December of
3 2022, right?

4 A. Yes.

5 Q. As of December of 2022, there was no
6 mixed-use development on the property, it was
7 effectively vacant, right?

8 A. Correct.

9 Q. Your report assumes a fully developed
10 mixed-use property as of December of 2022,
11 correct?

12 A. You're mischaracterizing and
13 misunderstanding my report. I'm not sure how
14 you're doing that, but I would direct you to
15 page 4, extraordinary assumption number 1. I
16 think we've been very clear on our process.

17 Q. And so that I understand your report --
18 because I admit I do not understand it. So that
19 I understand your report -- I thought I asked
20 this already and I thought you told me that it
21 was fully developed. Let me ask it a different
22 way. Under your \$55.5 million land valuation
23 effective December of 2022, is that valuing
24 vacant land or not? Very simple question.

1 MR. INGRAM: Objection to form. Asked
2 and answered. You may answer yet again, to the
3 extent you can.

4 A. I think you need to read the totality of
5 my report, and I would direct you to
6 extraordinary assumption number 1.

7 MR. ASHRAWI: Can you read back my
8 question to the witness.

9 And I'm going to ask you to just answer
10 yes or no, Mr. Gardner. I'm not trying to be
11 difficult. I just want to understand your
12 report.

13 (Record read as requested.)

14 MR. INGRAM: Objection. Argumentative.
15 Multiple questions. Confusing. Asked and
16 answered on numerous times now. And I
17 understand, counsel, you may not like his
18 answer, but he's entitled to give his answer.
19 He's been respectful.

20 MR. ASHRAWI: I don't know what his
21 answer is, Mr. Ingram.

22 BY MR. ASHRAWI:

23 Q. It's a yes-or-no question. Is that
24 vacant land value or improved land value? Just

1 answer that question.

2 MR. INGRAM: And there's no need to
3 raise your voice, counsel.

4 MR. ASHRAWI: I wasn't raising my voice,
5 Mr. Ingram. You're putting that on the record,
6 and it's untrue.

7 MR. INGRAM: I think we can all agree
8 you're raising your voice and you're being very
9 animated, Mr. Ashrawi.

10 MR. ASHRAWI: I'm being animated --

11 MR. INGRAM: It's not necessary.

12 MR. ASHRAWI: I'm being animated because
13 the witness can't answer a simple question, and
14 it's a very simple question.

15 BY MR. ASHRAWI:

16 Q. Is it a vacant land value or improved
17 land value? It's got to be one of those. Which
18 one is it?

19 A. On page 11 we clearly state, to
20 determine the opinion of value for the land in
21 the before scenario, we considered the projected
22 stabilized value of the entire development and
23 applied a land allocation percentage conclusion
24 to arrive at the stabilized land value for the

1 subject property.

2 Q. So it's the land value for a fully
3 developed property, fully developed and
4 stabilized property, right?

5 A. If you'll let me finish.

6 Once we determined the projected
7 stabilized land value of the subject property,
8 we calculated the present value of the land to
9 arrive at the final opinion of the -- final
10 opinion of the before value for the land. Below
11 are our calculations.

12 Q. I understand this is the before value of
13 the land. My question is: Is this the before
14 value of vacant land or improved land?

15 A. I don't know how to answer your question
16 any clearer than I already have.

17 MR. ASHRAWI: why don't we take our
18 break, and then we'll finish up this afternoon.

19 --O--

20 Thereupon, the luncheon recess was taken
21 at 1:26 p.m.

22 --O--

23

24

1 JANUARY 30, 2024

2 TUESDAY AFTERNOON SESSION

3 2:11 P.M.

4 --O--

5 BY MR. ASHRAWI:

6 Q. Mr. Gardner, earlier you indicated that
7 the December 2020 sale of this property was an
8 arm's length transaction. Do you recall that?

9 A. Yes.

10 Q. Would you agree that a recent arm's
11 length sale of a property generally represents
12 the best identification of value?

13 MR. INGRAM: Objection. Calls for
14 speculation. Incomplete hypothetical.

15 You may answer to the extent you can.

16 A. It's simply a data point.

17 Q. Is it your testimony, then, that a
18 recent arm's length sale does not represent the
19 best indication of value?

20 MR. INGRAM: Same objections.

21 A. I stand by my previous testimony.

22 --O--

23 (Deposition Exhibit 5 marked.)

24 --O--

1 BY MR. ASHRAWI:

2 Q. I want to hand you what we'll mark as
3 Exhibit 5. Are you familiar with these pages
4 from your work file?

5 A. Yes.

6 Q. What are they?

7 A. These are some pages from The Appraisal
8 of Real Estate.

9 Q. And are these true and accurate copies
10 of the pages with the page numbers indicated in
11 the corners of a physical copy of The Appraisal
12 of Real Estate?

13 MR. INGRAM: Objection to form.

14 A. I believe so.

15 Q. And you indicated that you sometimes
16 review or consult The Appraisal of Real Estate
17 when performing appraisal reports?

18 A. It's a textbook. Yes, we'll look at it.

19 Q. You used the allocation method of
20 valuation for your analysis under Scenario A; is
21 that correct?

22 A. Yes.

23 Q. Were you directed to use that method of
24 valuation --

1 A. No.

2 Q. -- by your client? I'm sorry?

3 A. No.

4 Q. So you elected to use that method,
5 correct?

6 A. I did.

7 Q. You would agree with me that the sales
8 comparison approach is usually the preferred
9 method for developing a site value conclusion?

10 MR. INGRAM: Objection to form.
11 Incomplete hypothetical. Calls for speculation.
12 You may answer.

13 A. No.

14 Q. What is the preferred method?

15 MR. INGRAM: Same objections.

16 A. There are various tools, various
17 methodologies to value sites. Sales comparison
18 approach being one, allocation being one,
19 extraction being one. There's multiple
20 methodologies.

21 Q. Would you agree with me that the cost
22 approach, the sale comparison approach, and the
23 income capitalization approach are the three
24 most used methods of valuation for property?

1 MR. INGRAM: Objection. Calls for
2 speculation. Incomplete hypothetical.

3 A. Those are the three approaches to value.

4 Q. Is the allocation method not a fourth
5 approach to value?

6 A. The three approaches to value are cost,
7 sales and income. The allocation method is a
8 method used to value land that's used on a
9 regular basis. Part of the site valuation.

10 Q. So it's not -- you described the cost,
11 sales and income as approaches to valuation
12 versus methods of valuing sites? I'm trying to
13 understand where the allocation method fits into
14 this.

15 MR. INGRAM: Objection to form.

16 A. In the whole umbrella of the three
17 approaches to value, the allocation method would
18 generally fall, on a broad sense, under the cost
19 approach because, as a key part of the cost
20 approach, you have to value the underlying site.

21 Q. So your testimony is the allocation
22 method is a component of a cost approach
23 valuation?

24 MR. INGRAM: Objection.

1 A. Have you ever taken an appraisal class?

2 Q. I get to ask the questions.

3 A. I understand. But I'm just trying to
4 understand because I'm trying to figure out how
5 I best answer your question.

6 Q. Sure. Let me direct you back to Exhibit
7 3. Can you pull that for me?

8 A. Sure.

9 Q. In the last bullet point under the
10 section for process and service, you indicate
11 that you determined and performed the most
12 applicable approach to value - cost sales
13 income - and developed a commercially reasonable
14 range of market value and final opinion of
15 value.

16 Did you do that in this case?

17 A. Yes.

18 Q. Which approach to value did you believe
19 was most applicable?

20 A. Well, we used the allocation method as
21 described in Exhibit 5. And the allocation
22 method -- it's described on page 363 in the
23 middle of the page there. Do you see that?

24 Q. Yeah, I see that.

1 A. It's a ratio. I would point to the
2 allocation as described there on page 363, and
3 that description out of The Appraisal of Real
4 Estate, which is under land and site valuation
5 you see at the bottom, which really falls
6 underneath the cost approach. Am I clear?

7 Q. So the allocation method falls under the
8 cost approach?

9 A. In a real macro sense, but it really can
10 stand on its own.

11 Q. And that's what I'm trying to
12 understand. So in this case --

13 A. And I'm trying to teach you, but I don't
14 understand your background, so it's hard to --

15 Q. So help me understand this. You said
16 you determined the most applicable approach to
17 value. What is -- very simple. What did you
18 determine to be the most applicable approach to
19 value in this case?

20 MR. INGRAM: Objection to form.

21 You can answer to the extent you can.

22 A. On page 8 of our report, I described and
23 summarized the land allocation method. I quote
24 The Appraisal of Real Estate, and you can walk

1 through the totality of it. It's page 8 through
2 11 of my report.

3 Q. So is the allocation method what you
4 determined to be the most applicable approach to
5 value?

6 MR. INGRAM: Objection. Misstates the
7 document.

8 You may answer to the extent you can.

9 A. I stick to my previous testimony.

10 Q. Your previous testimony didn't answer my
11 question. So let me ask it again. I'm not
12 referring to the report. I'm asking you whether
13 or not you determined that the land allocation
14 method is the most applicable approach to value
15 for this assignment; yes or no?

16 MR. INGRAM: Objection. Misstates
17 Exhibit 1.

18 You can answer to the extent you can.

19 A. On page 7 of my report, we developed the
20 highest and best use under two separate
21 scenarios. Scenario A is consistent with the
22 2014 comprehensive plan, which would prescribe
23 what any reasonable developer would have a
24 reasonable expectation to develop on the subject

1 site. And from there we did use the allocation
2 method, consistent with the 2014 comprehensive
3 land use plan.

4 Q. All right. I'm going to have you turn
5 to what's Bates numbered Gardner 79 in the
6 bottom right-hand corner of Exhibit 5. In the
7 middle of the page it talks about the allocation
8 method.

9 Do you see that?

10 A. Yes.

11 Q. And there are some limitations to the
12 allocation method, correct?

13 A. Yes.

14 Q. In fact, this document states that the
15 allocation method does not produce conclusive
16 value indications unless ample sales data is
17 available. Did I read that correctly?

18 A. Yes.

19 Q. And it also states that the method is
20 rarely used as a primary land valuation
21 technique for properties other than residential
22 subdivision lots.

23 Did I read that correctly?

24 A. Yes.

1 Q. And it also says that land-to-property
2 ratios can be difficult to support.

3 Did I read that correctly?

4 A. Yes.

5 Q. This is -- this property is not a
6 residential subdivision, correct?

7 A. Under Scenario A, consistent with the
8 comprehensive -- the 2014 comprehensive land use
9 plan, part of the property may, in fact, be used
10 as single unit -- single unit development homes.

11 Q. Your allocation method was applied to
12 the entire property, right, not just that
13 portion?

14 A. Correct.

15 Q. Did you provide any sales data to
16 support your allocation method under Scenario A?
17 Let me ask it a different way. Strike that.

18 You didn't provide any sales data to
19 support your allocation method under Scenario A,
20 did you?

21 MR. INGRAM: Objection. Misstates the
22 document.

23 A. Can you rephrase your question?

24 Q. Did you provide any sales data in your

1 report to support your opinion to value under
2 the allocation method under Scenario A?

3 A. Under Scenario A, the highest and best
4 use is stated on page 7. On page 8 of our
5 report we describe the process, we describe the
6 land allocation method. On page 9 we look at
7 land allocation for apartments, townhomes.
8 single family residence on page 10, office
9 properties on page 10, Lifestyle centers on page
10 10. Those allocations are summarized under the
11 various land use -- under the various land uses
12 on the top of page 11.

13 Q. So there's no sales data in any of those
14 pages you just named, is there?

15 MR. INGRAM: Objection. Misstates the
16 document.

17 A. Help me to understand what you mean by
18 sales data.

19 Q. Do you have any data, in fact, words
20 about sales of property --

21 MR. INGRAM: Objection.

22 Q. -- that goes into your allocation
23 method?

24 MR. INGRAM: Objection. Argumentative.

1 Asked and answered numerous times. I hope we
2 can move on.

3 MR. ASHRAWI: He asked me to clarify the
4 question, Chris, and I did. So clearly he
5 didn't answer the question, or he answered one
6 he didn't understood -- didn't understand.
7 Excuse me.

8 A. No.

9 Q. Thank you.

10 A. Well, no to what you just said. That's
11 not accurate. You just misstated my words.

12 Q. What did I misstate?

13 A. I stand by my previous testimony.

14 Q. What did I misstate, Mr. Gardner?

15 A. You mischaracterized -- Scenario A is
16 described on page 8, 9, 10, 11, and 12 in my
17 report.

18 Q. And on pages 8, 9, 11 and 12, is there
19 any data about any sales of property included in
20 those pages? It's just a yes-or-no question.
21 I'm not trying to be tricky.

22 A. I would refer you to -- on the top of
23 page 9, the opening paragraph that describes
24 what we did that I think is very clear, and what

1 we did is consistent with the allocation
2 market -- the allocation value and how it is
3 used in the market.

4 Q. Yeah, I've read that paragraph. I'm
5 just looking for any sales data, and I'm not
6 seeing it. I just want to make sure I'm not
7 missing it. That's all I'm asking you to do is
8 to direct me to anywhere in your report under
9 scenario A using the allocation where there's
10 sales data. And if there's not, that's fine.

11 A. We looked to comparable properties
12 within the market for the allocation between
13 land and improvements and total value, which is
14 typical and customary when extracting the land
15 percentage for the allocation method.

16 Q. And you used for that the valuations
17 included by the Franklin County auditor, right?

18 A. Yes.

19 Q. And you did so for apartments,
20 townhomes, single family residence, and office,
21 correct?

22 A. We also considered Lifestyle Centers
23 within various different counties in Ohio, as
24 shown on page 10.

1 Q. And I was -- forgive me. I was focusing
2 specifically on your use of the Franklin County
3 auditor. So you used the Franklin County
4 auditor totals for apartments, townhomes, single
5 family residence, office, and then two of the
6 Lifestyle Centers, right?

7 A. which is typical and customary
8 supporting documentation for the allocation
9 method.

10 Q. I wasn't questioning that. I was just
11 asking for a yes-or-no confirmation.

12 You indicate in the first paragraph on
13 page 9 that all the properties were in the
14 Worthington School District. Why is that?

15 A. The subject property is located within
16 the Worthington School District.

17 Q. Does that give you a better indication
18 of land allocation, or if you go outside of that
19 school district, are those data points still
20 valid?

21 MR. INGRAM: Objection to form.

22 A. To be clear, as we stated on page 9, all
23 the properties were in the Worthington City
24 School District. We also analyzed Lifestyle

1 Centers within Ohio. We looked at the land
2 allocation of properties in Worthington because
3 they were in closer proximity to the subject
4 property.

5 Q. Is proximity an important variable when
6 analyzing value of property?

7 MR. INGRAM: Objection. Incomplete
8 hypothetical. Calls for speculation.

9 A. It depends on what it is.

10 Q. I'm talking about for this property.

11 MR. INGRAM: Same objections.

12 A. Again, it depends on what it is.

13 Proximity can be a key data point. Other times
14 you use national data. The overarching -- what
15 you want to do is look at property of a similar
16 highest and best use.

17 Q. Did you visit any of the sites that you
18 listed on pages 9 and 10?

19 A. Yes.

20 Q. So you visited 351 Hutchinson Avenue in
21 Franklin County?

22 A. Yes.

23 Q. What's on that property?

24 A. Multifamily apartments.

1 Q. Did you visit 6374 Busch Boulevard in
2 Franklin County?

3 A. I did.

4 Q. Did you visit 6175 Northgate Road in
5 Franklin County?

6 A. Yes.

7 Q. Did you visit all the properties you
8 listed on pages 9 and 10?

9 A. Yes.

10 Q. Do you know how large some of these
11 Lifestyle Centers are? For example, do you know
12 how many acres Easton Town Center is?

13 A. As we sit here today, I don't have that
14 data in front of me.

15 Q. What about the banks?

16 A. I'm very familiar with that project.

17 Q. Yeah, me too. So how many acres do you
18 think it is?

19 MR. INGRAM: Objection. Calls for
20 speculation.

21 A. I don't have that data in front of me.

22 Q. How much investment monetarily went into
23 the banks?

24 A. What part of the banks are you talking

1 about?

2 Q. The whole area.

3 A. Significant.

4 Q. Do you have a number?

5 A. I do not, as we sit here today.

6 Q. You indicated earlier, I believe -- and
7 correct me if I'm wrong -- that there wasn't
8 ample sales data to do a comparison of the
9 overall property under Scenario A. Is that
10 accurate?

11 A. Yes.

12 Q. Did you look for comparable sales under
13 Scenario A?

14 A. We did.

15 Q. How did you perform that search?

16 A. We looked at what is typical and
17 customary.

18 Q. So for this property, what were the
19 parameters -- search parameters?

20 A. We have a mixed-use development, you
21 know, per the 2014 comprehensive plan that's
22 prescribed, and there really is no comparable
23 land sale for a property like that with all the
24 different mixed uses.

1 Q. I guess I'm asking a more basic
2 question, like what actual searches did you
3 perform to arrive at that conclusion?

4 MR. INGRAM: Objection to form.

5 A. The subject property is highly unique.
6 It's located in a mature area. There's really,
7 in my opinion, no comparable sales for 40 acres
8 for a mixed-use project that conform to the
9 various uses as prescribed per the 2014
10 comprehensive plan by the City of Worthington
11 for the subject property. There were no comps.

12 Q. I totally understand that there were no
13 comparable sales. My question was a little bit
14 more basic.

15 MR. ASHRAWI: Do you mind reading my
16 question back.

17 (Record read as requested.)

18 A. Again, I go back to my previous
19 testimony.

20 Q. Do you have a database of sales that you
21 maintain for Gardner Street?

22 A. Yes.

23 Q. Did you search through that database?

24 A. Yes.

1 Q. And how did you search through that
2 database?

3 A. Well, our research person performs all
4 those researches. She manages that database for
5 our firm. You know, we look at size, we look
6 at -- we look at properties of a similar highest
7 and best use, and there really are no -- in my
8 opinion, there were no direct comparable sales
9 for the subject property. There were sales
10 smaller of just a -- of different pieces. But
11 the totality of the project, it's very unique.
12 You have 40 acres in a maturely developed area.
13 There were no good, compelling comparable sales
14 for the subject.

15 Q. You're aware that there have been -- the
16 landowner has obtained at least two other
17 appraisal reports for this property, right?

18 A. I looked at them.

19 Q. They included comparable sales, correct?

20 A. Not very good ones.

21 Q. So your opinion is that those two
22 appraisal reports did not contain good
23 comparable sales of the subject?

24 MR. INGRAM: Objection. Misstates the

1 witness's testimony.

2 A. My opinion is, when you go through each
3 of the comparable sales used in those other
4 reports, none of those sales really reflect the
5 subject property when you look at the
6 comparables one by one.

7 --0--

8 (Deposition Exhibits 6-7 marked.)

9 --0--

10 BY MR. ASHRAWI:

11 Q. Just so we have a clean record, I'm
12 going to hand you what we'll mark as Exhibit 6
13 and Exhibit 7.

14 Mr. Gardner, I just handed you what we
15 marked as Exhibit 6 and 7. Can you tell me what
16 those documents are, starting with 6?

17 A. Exhibit 6 appears to be an appraisal
18 report performed by Ohio Real Estate
19 Consultants, Inc., dated November 30th, 2020,
20 for CNB Bank, and it was signed by Thomas R.
21 Horner.

22 Q. And the effective date of valuation for
23 that appraisal report was November 5th, 2020,
24 right?

1 A. Correct.

2 Q. And was this one of the appraisal
3 reports you were just referring to as -- you had
4 previously reviewed?

5 A. I looked at it.

6 Q. And this appraisal report does use the
7 sales comparison approach, right?

8 A. Yes.

9 Q. And is it your testimony that the
10 comparables used in this report, in your
11 opinion, are -- you would not use or are not
12 comparable to the site?

13 MR. INGRAM: Objection. Misstates this
14 witness's testimony.

15 A. Well, first of all, you have to look at
16 the highest and best use. Page 54, under
17 legally permissible, there's a sentence there,
18 this zoning will be specific to the proposed
19 uses in the developer's plan.

20 Q. That's the same plan you reviewed,
21 right?

22 A. I don't know what plan he reviewed.

23 The other thing that's interesting is on
24 page 55, under the discussion of legally

1 permissible, last sentence, if the current
2 zoning is approved, the total value, development
3 ready, could exceed \$15 million, which is
4 different than the opinion of value as stated
5 within this report.

6 Q. My question is a little different. Is
7 it your testimony that, in your opinion, these
8 comparable sales are inappropriate or you
9 wouldn't use them yourself in a sales comparison
10 approach?

11 A. Well, let's go through them one by one.

12 Q. Sure.

13 A. Page 63 is not a comparable sale, in my
14 opinion. It's the subject property.

15 Q. Have you ever used the sale of a subject
16 property as a land -- as a sales comparable in
17 any of your reports?

18 A. It's really not the best methodology,
19 because the -- you're like a dog chasing its
20 tail.

21 Q. I understand that's your testimony. My
22 question was different. Have you ever used the
23 sale of the subject property in one of your
24 appraisal reports that you can recall?

1 A. Of the subject property?

2 Q. Correct.

3 A. Not in 20 years.

4 Q. Okay.

5 A. Because it's not -- there is
6 considerable debate and discussion within The
7 Appraisal Institute over that, and, in my
8 opinion, comparable sale 1 in this case is not
9 comparable sale 1. It's just -- it's a -- as
10 stated -- first of all, it's not a sale. It's
11 not closed. It's a pending contract of the
12 subject property. So it's not really a
13 comparable sale.

14 Q. Okay.

15 MR. INGRAM: And for purposes of the
16 record, the witness is pointing to Exhibit 6.

17 MR. ASHRAWI: Thank you, Chris.

18 THE WITNESS: Page 63.

19 A. Land sale number 2 is in Dublin. It was
20 sold by the City of Dublin to the State of Ohio.

21 Q. Is that a problem?

22 A. Could be. It's just a data point. It's
23 for a 225,000 square foot ambulatory medical
24 center that's planned for 33 acres. I don't

1 think that is consistent with the
2 comprehensive -- the 2014 comprehensive land use
3 plan as prescribed by the City of Worthington, I
4 don't think would allow for a hospital to be
5 built. It's inconsistent with the land use
6 plan.

7 Q. The land use plan didn't prescribe
8 medical office?

9 A. Maybe on part of it. It prescribed a
10 mixed-use development.

11 Q. Okay.

12 Land sale 3 is located in Westerville.
13 It occurred way back in 2019. The buyer is
14 Otterbein University. The site's under a
15 planned unit development district. It's not
16 located in Worthington. Again, an interesting
17 data point, but I don't think that is consistent
18 with the 2014 comprehensive land use plan as
19 prescribed by Worthington for the subject
20 property.

21 Land sale 4 is located in Hilliard. It
22 occurred in 2020 for 470 mid-rise apartments.
23 Again, it's not for a mixed-use project, you
24 know, consistent with the 2014 comprehensive

1 land use plan.

2 Land sale 5 is located out in Delaware
3 County. It sold back in 2018. It's only an
4 8.32 acre site. The grantor had received full
5 zoning approval after litigation -- excuse me.

6 MR. ASHRAWI: I'm chuckling because --

7 THE WITNESS: Can I get in on the inside
8 joke?

9 MR. ASHRAWI: Yeah, we'll go off the
10 record.

11 (A discussion is held off the record.)

12 A. Sale 6 in Plain City for a Costco.
13 Costco is a big box retailer, and this site is
14 15.96 acres. Therefore, it's my opinion, when
15 you really take a close look and you peel away a
16 few layers of the onion on each comparison sale,
17 in highly technical terms, they're all weird, as
18 we were discussing. So they're all different.

19 So I don't think -- at the end of the
20 day, I don't think any of these sales are a good
21 and accurate reflection of the subject property
22 subject to a reasonable expectation that any
23 developer would have looking at the 2014
24 comprehensive land use plan developed by the

1 City of Worthington for the subject property.

2 Q. Same question for the comparable sales
3 in Exhibit 7, would you -- is it your testimony
4 that none of those comparable sales listed in
5 that Robert Weiler Company report reflect a
6 comparable property?

7 A. It has similar issues. I'm happy to go
8 through them if you would like.

9 Q. Nope. That's all I needed to know.
10 You keep using the term "what a
11 reasonable developer would reasonably expect."
12 Did you talk to the landowner about -- or your
13 representative from the property owner about
14 what their expectations were when they purchased
15 the property?

16 A. Yes.

17 Q. And who did you talk to specifically
18 about the expectations?

19 A. Sam. Sam Slater from Lifestyle
20 Communities. I'm sorry, Sam Stark. Sorry.

21 Q. And what is Sam's position with
22 Lifestyle Communities?

23 A. I believe he's a -- I'd have to look at
24 his former title. He was development director.

1 Q. And what did Sam tell you were Lifestyle
2 Community's expectations when they acquired this
3 property?

4 A. Well, they had done a typical and
5 customary due diligence on the property. They
6 put a lot of time, effort, research into what --
7 and they had reasonable market-based assumptions
8 on what could be built on the site. They took a
9 very deep dive hard look at the 2014
10 comprehensive land use plan that the City of
11 Worthington had performed or had performed which
12 prescribed various land uses. They felt they
13 had a reasonable expectation that they could
14 build something similar to what was prescribed
15 in that comprehensive land use plan.

16 Q. Did you talk to anyone else from
17 Lifestyle about that?

18 A. There was another gentleman, Joe -- I
19 can't think of his last name. He's their CFO.
20 He was in a meeting. I can't think of his last
21 name offhand. That's it.

22 Q. Is that documented anywhere in email
23 communication with them?

24 A. No. We just met in person. They did

1 provide me -- and you were provided with it in
2 my file -- a couple of very detailed Excel files
3 with financial models which demonstrate the
4 various uses that they were planning.

5 Q. You're aware now that the -- the
6 rezoning and the development plan were rejected
7 by the City of Worthington, right?

8 A. Yes.

9 Q. Have you read or reviewed any of the
10 court's opinions/orders in this case?

11 A. I don't believe so. You have my file.
12 I've looked over what's in my file.

13 Q. Mr. Gardner, when was the last time you
14 appraised property in Franklin County?

15 A. We worked on several parcels in Franklin
16 County in calendar year '23, and we have several
17 upcoming assignments. I toured a property
18 yesterday afternoon for an appraisal assignment
19 here in Franklin County.

20 Q. Are either of those -- is that
21 assignment related to an appropriation or
22 condemnation case?

23 A. One is.

24 Q. Who's the condemning authority in that

1 case?

2 A. I believe the City of Columbus.

3 Q. Where's the property located?

4 A. We haven't been retained yet, so it's
5 really confidential information at this point in
6 time. I just can't share it.

7 Q. So what have you been retained for in
8 Franklin County for condemnation cases?

9 A. In the past, we have worked on several
10 condemnation cases. We were hired by Speedway,
11 which is now 7-Eleven.

12 Q. In Franklin County?

13 A. In Franklin County.

14 Q. When was that?

15 A. Over the 15 years we've worked on
16 numerous -- none of those -- not in Franklin
17 County -- involved a deposition or courtroom
18 testimony. We settled -- all of those matters
19 were settled.

20 MR. ASHRAWI: Can we take a short break
21 and maybe wrap it up soon?

22 MR. INGRAM: Sure.

23 (Recess.)

24

1 BY MR. ASHRAWI:

2 Q. Mr. Gardner, I'm looking at your report,
3 and specifically where you start your opinion of
4 value under Scenario B on page 13. You did use
5 the sales comparison approach for this portion,
6 right?

7 A. Yes.

8 Q. And just so I'm clear, Scenario B
9 represents the current zoning on the property,
10 right?

11 A. Yes.

12 Q. And is your opinion of value in Scenario
13 B -- does that also have an effective date of
14 December of 2022?

15 A. Yes.

16 Q. And how did you identify the comparable
17 sales that you used for this analysis?

18 A. We used multiple sets of comparable
19 sales, residential, commercial/medical, and then
20 green space. We used comparable sales for
21 similar highest and best use.

22 Q. For the green space sales -- well, let
23 me back up. 31 of the close to 38 acres are
24 zoned as S-1 special, right?

1 A. Correct.

2 Q. Do you have anywhere in your report --
3 I'm asking legitimately because I may have
4 missed it -- where it identifies each of the
5 zoning districts and the uses allowed under
6 each?

7 A. Page 13 describes the three separate
8 parcels and what those zonings are, and the
9 zoning jurisdiction under the City of
10 Worthington.

11 Q. Yeah, I see that. I was looking if you
12 included like the table of permitted uses under
13 each zoning classification, but I'm not seeing
14 it in here. That's not included, is it?

15 A. For example, on page 13, we list out the
16 parcel ID, the zoning definition, the acreage,
17 and the zoning jurisdiction.

18 Q. Yes, I see that. I'm looking -- just so
19 I'm clear, I'm looking for anywhere in the
20 report that actually lists what uses are
21 permitted under each of those zoning
22 definitions. I don't think that's in here, but
23 correct me if I'm wrong.

24 A. So we have adequately described the

1 subject property and then who the zoning
2 jurisdiction is and what the zoning
3 classification is. We did not attach each one
4 of those within this, but they would be easily
5 identifiable, easy to look up.

6 Q. What are the permitted uses under the
7 S-1 district?

8 A. Example uses under the S-1 could include
9 church, school, park.

10 Q. Anything else?

11 A. That's on a high level. With what I
12 have in front of me today, those are the current
13 uses.

14 Q. But when you did your sales comparison
15 approach, you only used sales of what you
16 described as green space land, correct?

17 A. We looked at comparable sales of a
18 similar highest and best use for the four sales
19 identified on page 16.

20 Q. Well, let's talk about what goes in
21 highest and best use. The first one is what's
22 legally permissible under the zoning, right?

23 MR. INGRAM: Objection. Calls for a
24 legal conclusion.

1 A. The first test of highest and best use
2 is what's legally permissible or what would be
3 reasonably permitted, is the first test of
4 highest and best use.

5 Q. None of the comparables you used are
6 zoned in the City of Worthington or zoned in an
7 S-1 district, right?

8 A. All of the comparable sales are located
9 within Franklin County.

10 Q. Say that one more time.

11 A. All of the comparable sales are located
12 within Franklin County.

13 Q. Sure. I understand that. What I'm
14 saying is none of them are in the City of
15 Worthington and none of them are zoned S-1,
16 right?

17 A. Correct.

18 Q. On page 18 you have a section titled
19 total temporary regulatory take. Do you see
20 that?

21 A. Yes.

22 Q. Were you asked to opine on temporary
23 carrying costs and taxes under a total temporary
24 regulatory take?

1 A. Yes.

2 Q. Were you ever asked to opine on a
3 partial regulatory take?

4 MR. INGRAM: Objection to form.

5 A. I don't understand your question.

6 Q. Do you understand the difference between
7 a total regulatory take and a partial regulatory
8 take?

9 A. Just to help me clarify, when you're
10 referring to partial, are you only talking about
11 part of the property?

12 Q. Yes.

13 A. Versus the total, meaning the totality,
14 the total of the property?

15 Q. Correct.

16 A. Yes, I understand what those are.

17 Q. Were you ever asked to opine on the
18 result of a -- excuse me, a partial regulatory
19 take?

20 A. No.

21 MR. ASHRAWI: I have no more questions
22 for this witness.

23 Thank you, Mr. Gardner.

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Thereupon, the testimony of January

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30, 2024, was concluded at 3:15 p.m.

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CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Rhonda Lawrence, a stenographic court reporter and notary public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ERIC J. GARDNER, MAI, CCIM was first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given was taken down by me stenographically in the presence of said witness, afterwards transcribed; that the foregoing is a true and correct transcript of the testimony; that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto; that I am not a relative or employee of any attorney or counsel employed by the parties hereto; that I am not financially interested in the action; and further, I am not, nor is the court reporting firm with which I am affiliated, under contract as defined in Civil Rule 28(D).

In witness whereof, I have hereunto set my hand at Columbus, Ohio, on this 13th day of February, 2024.

Rhonda Lawrence
Rhonda Lawrence
Notary Public, State of Ohio

My commission expires: October 9, 2028

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